

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 16-0151

COMMISSIONER OF POLITICAL PRACTICES FOR  
THE STATE OF MONTANA, through JONATHAN  
R. MOTL, acting in his official capacity as The  
Commissioner of Political Practices,

Plaintiffs and Appellees,

v.

ARTHUR "ART" WITTICH,

Defendant and Appellant.

**FILED**  
ORDER

MAR 18 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

The Defendant and Appellant Arthur Wittich, by counsel, has filed a notice of appeal from a District Court order denying his motion to dismiss the captioned case pursuant to Montana Rule of Appellate Procedure 12(b)(1). Plaintiff and Appellee the Commissioner of Political Practices for the State of Montana (the COPP), by counsel, has filed a motion to dismiss the appeal as premature. In light of the fact that trial in this matter is scheduled to commence on March 28, 2016 and pursuant to our order, Wittich has filed an expedited response to the motion to dismiss.

Wittich sought dismissal of the COPP's case in the District Court on the basis that the court lacked subject matter jurisdiction because the complaint filed against him failed to comply with Administrative Rule of Montana 44.10.307(2) and (3)(a). Wittich argued that because the complaint in the administrative phase was not validly filed, the District Court had no authority to adjudicate the case. He also argued that the COPP lacked the authority to investigate and proceed against him and to submit the case to the County attorney under §§ 13-37-113 and -124, MCA, respectively. The District Court rejected his arguments. Pertinent here, the court concluded that it had jurisdiction over the matters before it pursuant to § 3-5-302(1)(b)-(c), MCA, which confers upon district courts jurisdiction in all civil

matters, as well as in all cases at law and in equity. The court relied upon our decision in *State v. Burch*, 2008 MT 118, ¶ 29, 342 Mont. 499, 182 P.3d 66, wherein we stated “[w]e have repeatedly held that a district court’s authority is determined by statute, not administrative rule.” The court therefore denied Wittich’s motion to dismiss for lack of subject matter jurisdiction. This appeal follows.

In its motion to dismiss the appeal, the COPP maintains that Wittich’s appeal is premature. It contends that the order from which Wittich appeals is not one implicating the court’s subject matter jurisdiction, but rather is an interlocutory order dealing with the interpretation of administrative rules and statutes. The COPP also refers us to our recent decision in *The Commissioner of Political Practices for the State of Montana v. Bannan*, 2015 MT 220, 380 Mont. 194, 354 P.3d 601, in which we rejected Bannan’s appeal from a District Court order denying his motion to dismiss the COPP complaint against him. As Wittich asserts here, Bannan argued that the District Court lacked subject matter jurisdiction over the COPP complaint. We dismissed Bannan’s appeal, holding that the issue before the court was one of statutory interpretation and not one of subject matter jurisdiction. We concluded that because orders denying motions to dismiss are not appealable (M. R. App. P. 6(5)(b)), Bannan’s appeal was premature, and that the merits of his arguments would not be addressed until after final judgment had been entered. *Bannan*, ¶¶ 11-13. The COPP maintains that the same result must follow here.

In response, Wittich argues that his appeal is not premature. He cites cases for the proposition that a District Court does not have subject matter jurisdiction if a plaintiff fails to satisfy statutory or administrative prerequisites to the filing of a civil action. For example, in *Art v. Montana Department of Labor & Industry*, 2002 MT 327, 313 Mont. 197, 60 P.3d 958, we concluded that the District Court lacked subject matter jurisdiction to act on Art’s petition for judicial review, because Art had failed to exhaust the prescribed statutory administrative remedies before seeking relief through judicial review. *Art*, ¶ 14. We noted that where a statute requires a petitioner to exhaust specific administrative remedies prior to filing suit, the petitioner may not circumvent that administrative process. *Art*, ¶ 17. We made the same

observation in our recent decision in *Interstate Explorations, LLC v. Morgen Farm & Ranch, Inc.*, 2016 MT 20, ¶ 9, 382 Mont. 136, \_\_\_ P.3d \_\_\_. In these cases, we correctly noted that if a petitioner fails to exhaust statutory administrative remedies, a District Court lacks jurisdiction to review the case. *Art*, ¶ 17; *Interstate Explorations*, ¶ 9.

Wittich argues that the foregoing cases are analogous to this case. He maintains that the COPP failed to satisfy certain prerequisites to filing suit, such as making a preliminary determination that there is sufficient evidence to justify prosecution of the action and performing a preliminary investigation. Section 13-37-124 and -111, MCA. Respectfully, we conclude there is a distinction between Wittich's case and the cases upon which he relies. Here, there is no contention that the COPP failed to exhaust statutorily required administrative remedies prior to bringing this action; rather, Wittich's complaints go to whether the COPP properly interpreted the statutes and administrative rules governing the investigation and prosecution of alleged violations of election laws.

"Subject-matter jurisdiction is a court's fundamental authority to hear and adjudicate a particular class of cases or proceedings." *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 57, 345 Mont. 12, 192 P.3d 186 (internal citations omitted). Subject-matter jurisdiction is extremely broad. Under the Montana Constitution, district courts have original jurisdiction in all civil matters, and cases at law and in equity. Mont. Const. art. VII, § 4(1). Wittich's claims concerning the process followed by the COPP do not divest the District Court of its broad jurisdiction to adjudicate this case.

Wittich claims the right of an immediate appeal, which would prevent the District Court trial from going forward. He relies upon Montana Rule of Appellate Procedure 6(3)(c), which permits an appeal from an order denying a motion to dismiss for lack of subject matter jurisdiction. However, as we noted in *Ballas v. Missoula City Board Of Adjustment*, 2007 MT 299, ¶ 17, 340 Mont. 56, 172 P.3d 1232 (citing *Searight v. Cimino*, 238 Mont. 218, 222, 718 P.2d 335, 337 (1989)): "[W]e will not allow a party's characterization of an issue to eclipse its substance, nor will we allow parties to relitigate the District Court's ruling merely because the appealing party has stylized the issue on appeal as


one of subject matter jurisdiction.” We conclude that the issues on appeal are not matters implicating the court’s subject matter jurisdiction. As in *Bannan*, the arguments raised here are matters of statutory and administrative rule interpretation, not subject matter jurisdiction. Therefore, the District Court’s order denying Wittich’s motion to dismiss this case for lack of subject matter jurisdiction is not immediately appealable. M. R. App. P. 6(5)(b).

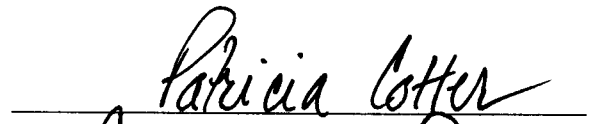
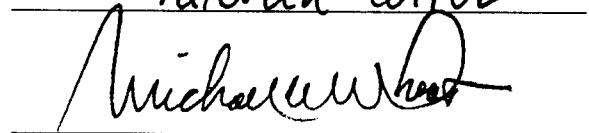
Wittich raises complaints which will no doubt be addressed during the trial of this matter. Moreover, should he not prevail at trial, Wittich will have the right to raise his preserved arguments on appeal with the benefit of a full record of the District Court proceedings. Therefore, he will not be without a remedy. Accordingly,


IT IS ORDERED that the COPP’s motion to dismiss this appeal as premature is GRANTED. Wittich’s appeal is DISMISSED WITHOUT PREJUDICE.

The Clerk of this Court shall provide immediate notice of this Order to all counsel of record and to the Honorable Ray Dayton, District Court Judge, Montana First Judicial District Court, Lewis and Clark County.

DATED this 18th day of March, 2016.

  
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Chief Justice

  
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Justices

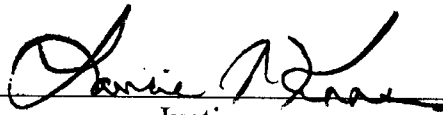
Justice Laurie McKinnon, dissenting.

Pursuant to M. R. App. P. 6(3)(c), a district court's order denying a party's Rule 12(b)(1) motion for lack of subject-matter jurisdiction is immediately appealable to this Court. In my opinion, the Court has mischaracterized Wittich's argument when we state "there is no contention that the COPP failed to exhaust statutorily required administrative remedies prior to bringing this action"; when, in fact, Wittich's undisputed contention is that neither a complaint alleging Wittich as a violator was filed with the COPP, § 13-37-111(5), MCA, nor has the COPP issued a notice and order of noncompliance against Wittich, § 13-37-111(2), MCA.

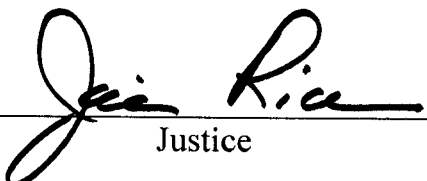
The COPP, pursuant to § 13-37-121, MCA, may issue an order of noncompliance regarding a statement or report filed with the commissioner by a candidate within certain prescribed statutory time frames. Judicial review regarding a notice and order of noncompliance which is contested by a candidate is governed by § 13-37-122, MCA. It appears no such notice and order of noncompliance was issued against Wittich and this manner of pursuing district court jurisdiction is therefore not available. Additionally, however, the COPP may investigate alleged election violations "upon the submission of a written complaint by any individual," upon which the commissioner "shall investigate any other alleged violation of the provisions of chapter 35 . . . ." Section 13-37-111 (2)(a), MCA. The District Court determined it had subject-matter jurisdiction because, although the *Bonogofsky* complaint named only Dan Kennedy as a potential violator, it referred to "other candidates" as well. Such an interpretation, however, would appear to justify investigation of *any* candidate by the COPP, thus giving the statutory provisions little meaning or purpose. Wittich argues that the *Bonogofsky* complaint was accordingly insufficient to invoke the jurisdiction of a district court because no complaint has been filed against him and no statute provides the COPP with authority to initiate a civil action sua sponte. In my opinion, Wittich has raised a legitimate issue concerning subject-matter jurisdiction of the District Court and this Court ought to consider his appeal. Our recent decision in *Bannan*, relied upon by the Court and COPP, is distinguishable from the issue raised here. The Court in *Bannan* held the challenge did

not invoke subject-matter jurisdiction because the issue concerned *where* a district court case *should* be filed, not whether it could be filed in the first instance based upon failure of statutory prerequisites. *Bannan*, ¶ 6.

Wittich has thus clearly raised an issue of whether the District Court has subject-matter jurisdiction based upon the aforementioned statutes. I would, accordingly, deny COPP's motion to dismiss his appeal as premature. We have not previously interpreted the provisions of these statutes pursuant to such a challenge, and I believe Wittich is entitled to have his motion to dismiss for lack of subject-matter jurisdiction adequately briefed and considered by the Court, as any other litigant. I would stay the District Court proceedings and allow further briefing and consideration by this Court in order to adequately address the issue.

  
Justice

Justice Jim Rice joins the dissent.

  
Justice